RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — "INTERNATIONAL HARVESTER CASE." — A petition for dissolution was brought by the United States against the International Harvester Co. alleging that the corporation constituted a combination in restraint of trade and a monopoly. The Company had been organized in 1902 out of six independent and competing companies, and controlled between 80 and 85 per cent of the harvesting machinery output. No attempt to control prices, stifle competitors, or interfere otherwise with trade was proved. *Held*, that the defendant be dissolved. *United States* v. *International Harvester Co.*, 214 Fed. 987 (Dist. Ct., Minn.).

The question of whether this case is a proper application of the rule laid down in the Standard Oil and Tobacco Cases, is taken up in this issue of the REVIEW, p. 87.

SALES — RISK OF LOSS — EFFECT OF BUYER'S RIGHT OF INSPECTION. — The plaintiff agreed to sell and deliver a consignment of boxes f.o.b. place of shipment, and shipped the goods in conformity with the contract. Before the buyer had had opportunity to inspect the boxes, they were washed overboard and destroyed. The plaintiff now sues for the price of the goods. *Held*, that he can recover. *Skinner* v. *James Griffiths & Sons*, 141 Pac. 692 (Wash.).

On sales of goods which the seller is authorized to deliver to a carrier, title passes to the buyer on delivery to the carrier, if delivery is made in accordance with the authority given. The buyer's right of inspection then serves to determine whether title has so passed, and operates as a condition precedent, not to the passing of title, but merely to the payment of the price. *Murphy* v. *Sagola Lumber Co.*, 125 Wis. 363, 103 N. W. 1113. See WILLISTON, SALES, §§ 278, 473. *Cf. Giffen* v. *Selma Fruit Co.*, 5 Cal. App. 50, 84 Pac. 885. The risk of loss is therefore on the buyer, if the seller has shipped in conformity with the contract, although the buyer has been unable to inspect. *Magee* v. *Billingsley*, 3 Ala. 679, 698; *Virginia Kid Co.* v. *New Castle Leather Co.*, 89 Atl. 367 (Del.). The principal case is an unusually clear statement of this rule, which is now generally adopted. Cases where delivery is to be made to the buyer must, however, be distinguished. For there the buyer's assent to take delivery is essential, and his right of inspection operates as a condition precedent to the transfer of title. *McNeal* v. *Braun*, 53 N. J. L. 617, 23 Atl. 687. Again, there is authority declaring that where there is express reservation of the right of inspection, title does not pass until inspection by the buyer. *Phœnix Packing Co.* v. *Humphrey Ball Co.*, 58 Wash. 396, 401, 108 Pac. 952, 954. See *Livesley* v. *Johnston*, 45 Ore. 30, 43, 76 Pac. 946, 949.

But these cases construe the reservation as a reservation of the passage of title and do not deny the general principle.

SALES — TIME OF PASSING OF TITLE — SALE OF STANDING TREES. — The defendant executed an instrument under seal which purported to sell growing trees to the plaintiff and to give him two years in which to cut and remove them. At the expiration of the period, the defendant claimed the timber, cut, but not removed. The plaintiff brought trover against the defendant. *Held*, that he cannot recover on the ground that title passed only to timber removed within the period limited. *Smith* v. *Ramsey*, 82 S. E. 189 (Va.).

Under a similar agreement the vendee removed timber after the time limit had expired. The vendor brought suit for the timber so removed. *Held*, that he can recover, on the ground that the vendee's title was subject to defeasance as to timber not removed within the term. *Bond* v. *Ungerecht*, 167 S. W. 1116 (Tenn.).

Instruments of sale of standing trees, containing a clause limiting the time in which the vendee may cut and remove them, have been given various constructions. On one view, the clause is a covenant and absolute title passes.

Zimmerman Mfg. Co. v. *Daffin*, 149 Ala. 380, 42 So. 858. If timber is removed after the period, the vendor's remedy is for breach of covenant or in trespass, but the value of the trees is not a part of the damages. Courts of equity however will not require the vendor to permit the trespass. *Peirce* v. *Finerty*, 76 N. H. 38, 76 Atl. 194. Support has been given this construction because it is claimed that no forfeiture is involved. See 17 HARV. L. REV. 411. A second view, that of the Virginia case, regards the clause as a condition precedent with title passing only to those trees cut and removed within the period. *Boisaubin* v. *Reed*, 2 Keyes (N. Y.) 323, 1 Abb. Dec. 161. This is scarcely the intention of the parties as expressed in the absolute terms of the conveyance. The Tennessee case adopted the third, and most preferable view, that the clause is a condition subsequent and that title passes subject to defeasance as to timber not removed within the time limit. *Allen & Nelsom Mill Co.* v. *Vaughn*, 57 Wash. 163, 106 Pac. 622. This construction fulfils the intention of the parties without violating the language of the instrument and avoids a situation where a legal title can only be asserted by means of a trespass.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — STATE TAXATION ON THE PROCEEDS OF INTERSTATE COMMERCE. — A Texas statute [ACT 30th, LEG. (1st Ex. Sess.) c. 18] imposed upon each terminal company doing business in the state "an occupation tax" "equal to one per cent of the total amount of its gross receipts from all sources whatever." This tax was stated to be in excess of all other taxes, but those paying it were to be relieved from the operation of former enactments imposing "occupation" taxes and a tax upon intangible assets. Defendant, an interstate company, contests the tax. *Held*, that the statute is constitutional. *State* v. *Houston Belt & Terminal Ry. Co.*, 166 S. W. 83 (Tex. Civ. App.).

For a discussion of this case in the light of the various United States Supreme Court holdings on the subject, see NOTES, p. 93.

WITNESSES — COMPETENCY — COMPETENCY OF A PRESIDING JUDGE AS WITNESS. — One of the presiding justices voluntarily took the stand and testified why a certain licensing committee, of which he had been a member, had referred the hearing to the body then sitting. *Held*, that the refusal of the license be affirmed. *Semble*, that the justice was not a competent witness. *Mitchell* v. *Justices of Croydon*, 30 T. L. R. 526, 20 Wkly. Notes, 225.

A judge may always testify in a cause where he is not sitting, as to the proceedings before him at another trial. *State* v. *Duffy*, 57 Conn. 525, 18 Atl. 791. But a judge cannot be required to give testimony at a trial over which he presides. *State* v. *De Maio*, 69 N. J. L. 590, 55 Atl. 644; *Reno Mill & Lumber Co.* v. *Westerfield*, 26 Nev. 332, 67 Pac. 961, 69 Pac. 899. Early English practice, however, seems to have considered a presiding judge a competent witness. *Trial of Oates*, 10 How. St. Tr. 1079, 1142; *Trial of Stafford*, 7 How. St. Tr. 1293, 1413, 1442. Subsequently doubts as to the propriety of this were expressed. See *Duke of Buccleuch* v. *Metropolitan Board*, L. R. 5 H. L. 418, 433; *Rebina* v. *Petrie*, 20 Ont. 317, 323. In America, in the absence of statutes, the weight of authority is that one of the presiding justices is not a competent witness. *Morss* v. *Morss*, 11 Barb. (N. Y.) 510. Various reasons have been given, among others, that there would be no one to swear him, that he would have to pass on the admissibility of his own evidence, and that he could not be held for contempt. *Baker* v. *Thompson*, 89 Ga. 486, 15 S. E. 644; *Martland* v. *Zanga*, 14 Wash. 92, 44 Pac. 117; *People* v. *Miller*, 2 Park. Cr. (N. Y.) 197. But statutes in many states allow the judge to testify. See CHAMBERLAYNE, EVIDENCE, p. 747. It is then at his discretion to proceed, or to suspend the trial until another judge can be secured. *State* v. *Houghton*, 45 Ore. 110, 75